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10/694,352	10/28/2003	Takeshi Sakai	SAKAI12A	3967
1444 7590	11/15/2004	EXAMINER		
	NEIMARK, P.L.L.C	PESELEV, ELLI		
624 NINTH STRE SUITE 300	ET, NW		ART UNIT	PAPER NUMBER
WASHINGTON, DC 20001-5303			1623	<del>.</del>

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    10/994, 352	<del> </del>		T	Application No.	Applicant(s)					
Elii Peselov										
Period for Reply  A SHORTENED STATULTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILUNG DATE of this communication appears on the cover sheet with the correspondence address − Period for Reply  A SHORTENED STATULTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILUNG DATE of THIS COMMUNICATION.  Edination of time may be available under the provisions of 3° CR1.136(a). In one exent, however, may a reply be timely filled after 51(c) globy. The provision of 3° CR1.136(a). In one exent, however, may a reply be timely filled after 51(c) globy. The provision of 3° CR1.136(a). In one exent, however, may a reply be timely filled after 51(c) globy. The post of the provision of 5° CR1.136(a). The provision of the store and place of the communication.  If the period for apply specified above is large time they globy days, will be considered timely.  If the period for apply specified above is large time they globy days, will be considered timely.  Failthe terp within the set or extended placed for reply within the set or came AstNQCNEC. Set 3.33. Any yealy specieved by the Office later from they on monks after the mailing date of this communication, even if firrely filed, may reduce any event of part the displacement of the provision of Claims  4) ☐ Claim(s) 1 and 2 lafare pending in the application.  4) ☐ Claim(s) 1 and 2 lafare allowed.  6) ☐ Claim(s) 1 and 2 lafare rejected.  7) ☐ Claim(s) 1 and 2 lafare rejected.  8) ☐ Claim(s) 1 and 2 lafare rejected.  9) ☐ The specification is objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U	Office Action Summary			· · · · · · · · · · · · · · · · · · ·						
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extracions of time may be windlable under the provisions of 3/CFR 1.136(s), in no event, however, may a reply be timely filled  Extracions of time may be windlable under the provisions of 3/CFR 1.136(s), in no event, however, may a reply be timely filled  If the period for reply sepondable above is less than thirty (30) days, a reply within the statulatory privated may play and wit going be (30) eNOCATES from the mailing date of this communication or reply supplied for reply supplied for reply supplied for reply supplied to reply within the set of catendable punction attachary period will apply and will expise the mailing date of this communication.  Fallow by within the set of catendable punction and statulary period will apply and will expise the mailing date of this communication.  Fallow by within the set of catendable punction and statulary period will apply and will expise the mailing date of this communication.  Fallow by within the set of catendable punction and statulary period will be play and will expise the mailing date of this communication.  Fallow by any within the set of catendable punction and and the two reliable date of the communication.  Fallow by any will be any and any statulary and any statulary and provided by the catendable punction.  Status  1) Responsive to communication(s) filled on		The MAILING DATE of this communi				ddress				
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2a)  This action is FINAL. 2b)  This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s) 1 and 2 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5)  Claim(s) is/are allowed.  6)  Claim(s) 1 and 2 is/are rejected.  7)  Claim(s) is/are objected to.  8)  Claim(s) are subject to restriction and/or election requirement.  Application Papers  9)  The specification is objected to by the Examiner.  10)  The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received in Application No.  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(e)  1) Notice of References Cited (PTO-892)  3) Notice of Informal Patent Application (PTO-152)	Status									
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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,720,419. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed compounds are encompassed by the patented compound.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (571) 272-0659. The examiner can normally be reached on 9.00-5.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Wilson can be reached on (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elli Peselev

ELLI PESELEV PRIMARY EXAMINER GROUP 1800